

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEREMY LEVIN and DR. LUCILLE LEVIN,

Plaintiffs,

-v-

THE BANK OF NEW YORK MELLON,
JPMORGAN CHASE & CO., JPMORGAN
CHASE BANK, N.A., SOCIÉTÉ
GÉNÉRALE, and CITIBANK, N.A.

Defendants.

THE BANK OF NEW YORK MELLON,
JPMORGAN CHASE & CO., JPMORGAN
CHASE BANK, N.A., SOCIÉTÉ
GÉNÉRALE, and CITIBANK, N.A.

Third-Party Plaintiffs,

-v-

STEVEN M. GREENBAUM, *et al.*

Third-Party Defendants.

(FILED PARTIALLY UNDER SEAL DUE
TO CONFIDENTIAL INFORMATION
SUBJECT TO PROTECTIVE ORDER)

Civ. No. 09 CV 5900 (RPP) (MHD)

**JUDGMENT CREDITORS' RESPONSE
AND COUNTERSTATEMENT TO
STATEMENT OF UNDISPUTED
FACTS IN SUPPORT OF THE [REDACTED]
[REDACTED]
MOTION FOR SUMMARY
JUDGMENT PURSUANT TO LOCAL
RULE 56.1**

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The Judgment Creditors¹, by their undersigned counsel, respectfully submit the following Response and Counterstatement to Statement of Undisputed Facts in Support of the [REDACTED] [REDACTED] Motion for Summary Judgment Pursuant to Local Rule 56.1.

<u>MATERIAL FACTS</u>	<u>JUDGMENT CREDITORS' RESPONSE AND COUNTERSTATEMENT</u>	<u>RECORD SUPPORT</u>
1. The intended beneficiary of the [REDACTED] was the [REDACTED].	Disputed. Citibank identified the beneficiary of the [REDACTED] as [REDACTED]. The evidence upon which the [REDACTED] relies in support of this assertion, the [REDACTED] ("Decl."), is irrelevant, inadmissible opinion of a lay witness, lacks foundation, lacks personal knowledge, is an improper legal conclusion, is a conclusory statement unsupported by other factual statements in the declaration, and is hearsay. There is therefore no admissible evidence presented by [REDACTED] in support of this assertion of undisputed material fact.	<i>See Levin v. Bank of New York</i> , No. 09-5900 (RPP) (MHD) (ECF Dkt. No. 438); <i>see also</i> Fed. R. Evid. 401-403, 602, 701, 801.
2. [REDACTED], the financial institution serving the [REDACTED], was described as the intended	Disputed. Citibank identified the beneficiary of the [REDACTED] as [REDACTED]. The evidence	<i>See Levin v. Bank of New York</i> , No. 09-5900 (RPP) (MHD) (ECF Dkt. No. 438); <i>see also</i> Fed. R. Evid. 401-

¹ Unless otherwise noted, all capitalized terms have the same meaning as given in the Judgment Creditors Supplemental Memorandum of Law in Support of Judgment Creditors' Renewed Joint Motion for Partial Summary Judgment on Single Phase Two Asset ("Judgment Creditors' Motion").

<u>MATERIAL FACTS</u>	<u>JUDGMENT CREDITORS' RESPONSE AND COUNTERSTATEMENT</u>	<u>RECORD SUPPORT</u>
beneficiary by mistake.	upon which the [REDACTED] relies in support of this assertion, the [REDACTED] Decl., is irrelevant, inadmissible opinion of a lay witness, lacks foundation, lacks personal knowledge, is an improper legal conclusion, is a conclusory statement unsupported by other factual statements in the declaration, and is hearsay. There is therefore no admissible evidence presented by [REDACTED] in support of this assertion of undisputed material fact.	403, 602, 701, 801.
3. [REDACTED] had no right to the funds constituting the [REDACTED] beyond its role as a financial institution serving its client, the [REDACTED]. The [REDACTED] was intended for the [REDACTED] benefit alone.	Disputed. Citibank identified the beneficiary of the [REDACTED] as [REDACTED]. This Court has held that a Beneficiary and a Beneficiary Bank have an interest in assets at issue in this litigation sufficient to warrant turnover pursuant to FSIA 1610(g) and TRIA. The evidence upon which the [REDACTED] relies in support of this assertion, the [REDACTED] Decl., is irrelevant, inadmissible opinion of a lay witness, lacks foundation, lacks personal knowledge, is an improper legal conclusion, is a conclusory statement unsupported by other factual statements in the declaration, and is hearsay. There is therefore no admissible evidence presented by [REDACTED] in support of this assertion of undisputed material fact.	<i>See Levin v. Bank of New York</i> , No. 09-5900 (RPP) (MHD) (ECF Dkt. No. 438) ; <i>see also Levin v. Bank of New York</i> , No. 09-5900 (RPP) (MHD) (ECF Dkt. No. 925) Opinion & Order (“Phase Two Turnover Order”) at 20-21, 27; <i>see also</i> Fed. R. Evid. 401-403, 602, 701, 801.

<u>MATERIAL FACTS</u>	<u>JUDGMENT CREDITORS' RESPONSE AND COUNTERSTATEMENT</u>	<u>RECORD SUPPORT</u>
4. After OFAC “carefully reviewed the information presented and otherwise available to it in connection with [the ██████],” OFAC authorized the return of the ██████ to the ██████.	Disputed. The evidence upon which the ██████ relies in support of this assertion, Exhibit A to the Declaration of Scott K. McCulloch in Support of Third-Party Defendant ██████ Motion for Summary Judgment and Opposition to Judgment Creditors’ Motion for Partial Summary Judgment (“McCulloch Decl.”), is lacking foundation, not authenticated, and/or hearsay. There is therefore no admissible evidence presented by ██████ in support of this assertion of undisputed material fact.	<i>See</i> Fed. R. Evid. 801, 901.
5. OFAC did so by license dated March 13, 2014, authoring the return of the ██████ back to the ██████.	Disputed. The evidence upon which the ██████ relies in support of this assertion, Exhibit A to the McCulloch Decl., is lacking foundation, not authenticated, and/or hearsay. There is therefore no admissible evidence presented by ██████ in support of this assertion of undisputed material fact.	<i>See</i> Fed. R. Evid. 801, 901.
6. The purpose of the ██████ was to provide assistance to the ██████ by defraying the substantial cost of participating in international “away” matches.	Disputed. The evidence upon which the ██████ relies in support of this assertion, the ██████ Decl., is irrelevant, inadmissible opinion of a lay witness, lacks foundation, lacks personal knowledge, is an improper legal conclusion, is a conclusory statement unsupported by other factual statements in the declaration,	<i>See</i> Fed. R. Evid. 401-403, 602, 701, 801.

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	and is hearsay. There is therefore no admissible evidence presented by [REDACTED] in support of this assertion of undisputed material fact.	
7. Citibank blocked the [REDACTED] on February 2, 2010 after it was initiated on January 28, 2010. As a result, the EFT never reached the [REDACTED] or its bank, [REDACTED].	Undisputed.	
8. The error was not noticed until after the EFT was blocked by Citibank, N.A.	Disputed. Citibank identified the beneficiary of the [REDACTED] as [REDACTED]. The evidence upon which the [REDACTED] relies in support of this assertion, the [REDACTED] Decl., is irrelevant, inadmissible opinion of a lay witness, lacks foundation, lacks personal knowledge, is an improper legal conclusion, is a conclusory statement unsupported by other factual statements in the declaration, and is hearsay. There is therefore no admissible evidence presented by [REDACTED] in support of this assertion of undisputed material fact.	<i>See Levin v. Bank of New York</i> , No. 09-5900 (RPP) (MHD) (ECF Dkt. No. 438); <i>see also</i> Fed. R. Evid. 401-403, 602, 701, 801.
9. Both the [REDACTED] and the EFT's intended beneficiary, the [REDACTED], submitted timely unblocking applications to OFAC.	Disputed. The evidence upon which the [REDACTED] relies in support of this assertion, the [REDACTED] Decl., is irrelevant, inadmissible opinion of a lay witness, lacks foundation, lacks personal knowledge, is an improper legal conclusion, is a conclusory statement unsupported by other factual	<i>See</i> Fed. R. Evid. 401-403, 602, 701, 801.

<u>MATERIAL FACTS</u>	<u>JUDGMENT CREDITORS' RESPONSE AND COUNTERSTATEMENT</u>	<u>RECORD SUPPORT</u>
	statements in the declaration, and is hearsay. There is therefore no admissible evidence presented by [REDACTED] in support of this assertion of undisputed material fact.	
10. The Court in the Phase Two Order explicitly declined to address whether or not FSIA § 1610(g) could “independently provide a basis for preemption of state law and execution of blocked EFTs.”	Disputed. The Court in Phase Two specifically held that “EFTs are Subject to Attachment Under TRIA § 201(a) and FSIA § 1610(g)” and rejected the argument to the contrary.	<i>See</i> Phase Two Turnover Order at 16-18.
11. The [REDACTED] is not an organization listed on the Specially Designated Nationals (“SDN”) List.	Undisputed.	
12. The [REDACTED] is well known to OFAC, through the instant applications and previous applications and reviews related to the [REDACTED], including those relating to [REDACTED]	Disputed. The [REDACTED] refers to “McCulloch Decl. Exs. 3-5,” which do not exist. Presumably, [REDACTED] is referring to Exhibit C to the McCulloch Decl., “an article published in the New York Times entitled [REDACTED]” The evidence upon which the [REDACTED] relies in support of this assertion, Exhibit C to the McCulloch Decl., is lacking foundation, not authenticated, and/or hearsay. There is therefore no admissible evidence presented by [REDACTED] in support of this assertion of undisputed material fact.	<i>See</i> Fed. R. Evid. 401-403, 801, 901.
13. The [REDACTED] has performed extensive review,	Disputed. The evidence upon which the [REDACTED] relies in	<i>See</i> Fed. R. Evid. 401-403,

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including on-side observation of the last election of [REDACTED] leadership, and confirmed that the [REDACTED] is in compliance with [REDACTED].	support of this assertion, the [REDACTED] Decl., is irrelevant, inadmissible opinion of a lay witness, lacks foundation, lacks personal knowledge, is an improper legal conclusion, is a conclusory statement unsupported by other factual statements in the declaration, and is hearsay. There is therefore no admissible evidence presented by [REDACTED] in support of this assertion of undisputed material fact.	602, 701, 801.
14. The [REDACTED] provide that a [REDACTED] may be suspended if state authorities interfere in its affairs in such a significant way that : [REDACTED]	Disputed. The evidence upon which the [REDACTED] relies in support of this assertion, the [REDACTED] Decl., is irrelevant, inadmissible opinion of a lay witness, lacks foundation, lacks personal knowledge, is an improper legal conclusion, is a conclusory statement unsupported by other factual statements in the declaration, and is hearsay. There is therefore no admissible evidence presented by [REDACTED] in support of this assertion of undisputed material fact.	See Fed. R. Evid. 401-403, 602, 701, 801.
15. The [REDACTED] review of the last election for leadership of the [REDACTED] was conducted in close collaboration with the [REDACTED]	Disputed. The evidence upon which the [REDACTED] relies in support of this assertion, the [REDACTED] Decl., is irrelevant, inadmissible opinion of a lay witness, lacks foundation, lacks personal knowledge, is an improper legal conclusion, is a conclusory statement unsupported by other factual	See Fed. R. Evid. 401-403, 602, 701, 801.

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	statements in the declaration, and is hearsay. There is therefore no admissible evidence presented by [REDACTED] in support of this assertion of undisputed material fact.	
16. [REDACTED] requires members [REDACTED]	Disputed. The evidence upon which the [REDACTED] relies in support of this assertion, Exhibit E to the McCulloch Decl., is lacking foundation, not authenticated, irrelevant, and/or hearsay. There is therefore no admissible evidence presented by [REDACTED] in support of this assertion of undisputed material fact.	<i>See</i> Fed. R. Evid. 401-403, 801, 901.
17. The [REDACTED], previously [REDACTED] for a period from November 23, 2006 to December 19, 2006, is currently a [REDACTED]	Disputed. The evidence upon which the [REDACTED] relies in support of this assertion, the [REDACTED] Decl., is irrelevant, inadmissible opinion of a lay witness, lacks foundation, lacks personal knowledge, is an improper legal conclusion, is a conclusory statement unsupported by other factual statements in the declaration, and is hearsay. There is therefore no admissible evidence presented by [REDACTED] in support of this assertion of undisputed material fact.	<i>See</i> Fed. R. Evid. 401-403, 602, 701, 801.
18. The [REDACTED], previously [REDACTED] for a period from November 23, 2006 to December 19, 2006, is [REDACTED]	Disputed. The evidence upon which the [REDACTED] relies in support of this assertion, Exhibits D and E to the McCulloch Decl., are lacking foundation, not authenticated, irrelevant, inadmissible opinion testimony of a lay	<i>See</i> Fed. R. Evid. 401-403, 701, 801, 901.

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	witness, and/or hearsay. There is therefore no admissible evidence presented by [REDACTED] in support of this assertion of undisputed material fact.	
19. The [REDACTED] has confirmed through its reviews that the [REDACTED] enjoys no exclusive rights in Iran.	Disputed. The [REDACTED] is the only entity which [REDACTED] [REDACTED] [REDACTED] It thus holds exclusive rights to manage soccer in Iran. The evidence upon which the [REDACTED] relies in support of this assertion, the [REDACTED] Decl., is irrelevant, inadmissible opinion of a lay witness, lacks foundation, lacks personal knowledge, is an improper legal conclusion, is a conclusory statement unsupported by other factual statements in the declaration, and is hearsay. There is therefore no admissible evidence presented by [REDACTED] in support of this assertion of undisputed material fact.	<i>See</i> Declaration of James M. Dorsey in Support of Judgment Creditors' Reply in Support of Renewed Joint Motion for Partial Summary Judgment on Single Phase Two Asset and Opposition to Defendant [REDACTED] Motion for Summary Judgment ("July 19 Dorsey Decl.") at ¶ 17; <i>see also</i> Fed. R. Evid. 401-403, 602, 701, 801.
20. As part of its review for [REDACTED], the [REDACTED] has determined that the [REDACTED] does not issue shares or any other form of ownership interest, and that the Government of Iran does not own any part of the [REDACTED] or otherwise hold any form of ownership	Disputed. A majority of the [REDACTED] are owned by the Government of Iran or Iranian governmental entities or have other substantial ties to the Government of Iran, and the Government of Iran has a substantial ownership interest in the [REDACTED]. The evidence upon which the [REDACTED] relies in support of this assertion, the	<i>See</i> Declaration of James M. Dorsey in Support of Judgment Creditors Renewed Joint Motion for Partial Summary Judgment on Single Phase Two Asset ("June 1 Dorsey Decl.") at ¶ 17; <i>see also</i> July 19 Dorsey Decl. at ¶ 4; <i>see also</i> Affidavit of Dr. Patrick Clawson in Support of Judgment Creditors'

<u>MATERIAL FACTS</u>	<u>JUDGMENT CREDITORS' RESPONSE AND COUNTERSTATEMENT</u>	<u>RECORD SUPPORT</u>
22. There is no evidence, competent or not, submitted in support of Judgment Creditors' Renewed Joint Motion for Partial Summary Judgment on Single Phase Two Asset showing that the government of Iran established the [REDACTED].	Disputed. The Government of Iran organized the [REDACTED]. The evidence upon which the [REDACTED] relies in support of this assertion, the [REDACTED] Decl., is irrelevant, inadmissible opinion of a lay witness, lacks foundation, lacks personal knowledge, is an improper legal conclusion, is a conclusory statement unsupported by other factual statements in the declaration, and is hearsay. There is therefore no admissible evidence presented by [REDACTED] in support of this assertion of undisputed material fact.	See July 19 Dorsey Decl. at ¶ 6; <i>see also</i> Fed. R. Evid. 401-403, 602, 701, 801.

Dated: Los Angeles, California
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